

Remarks

Reconsideration of this Application is respectfully requested.

In the Office Action dated July 20, 2009, claims 1-36 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Leonard et al., U.S. Patent No. 7,188,120. Claims 1-36 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Price et al., U.S. Patent No. 7,337,445. Claims 1-36 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by TechOne Hosting (2003).

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. 102(e) based on Leonard and Price

In response to the Final Office Action dated July 20, 2009, and the Supplemental Advisory Action dated November 16, 2009, Applicants have amended the claims to further clarify the claimed combination. Specifically, Applicants have amended the claims to recite that, on the computer system, there are multiple Virtual Private Servers running, with each Virtual Private Server supporting a server process that responds to user requests. Additionally, there is one or more Virtual Private Servers that is (are) dedicated not to responding to user requests, but to performing administrative functions over the other Virtual Private Servers. All of the references cited in the Office Action teach against this combination.

For example, the Leonard reference, in the cited passage, specifically states that what is claimed is expressly contrary to its concept. The Supplemental Advisory Action cited column 4, lines 5-30. This passage of Leonard is reproduced below:

In one embodiment, each non-global zone 140 may be administered separately. More specifically, it is possible to assign a zone administrator to a particular non-global zone 140 and grant that zone administrator rights and privileges to manage various aspects of that non-global zone 140. With such rights and privileges, the zone administrator can perform any number of administrative tasks that affect the processes and other entities within that non-global zone 140. However, **the zone administrator cannot change or affect anything in any other non-global zone 140 or the global zone 130. Thus, in the above example, each competitor can administer his/her zone, and hence, his/her own set of applications, but cannot change or affect the applications of a competitor.** In one embodiment, to prevent a non-global zone 140 from affecting other zones, the entities in a non-global zone 140 generally are not allowed to access or control any of the physical devices of the computer system.

In contrast to a non-global zone administrator, a global zone administrator with proper rights and privileges may administer all aspects of the OSE 100 and the computer system as a whole. Thus, a global zone administrator may, for example, access and control physical devices, allocate and control system resources, establish operational parameters, etc. A global zone administrator may also access and control processes and entities within a non-global zone 140.

For purposes of the present discussion, Applicants will treat the non-global zones in Leonard as analogous to the claimed Virtual Private Servers.¹ If the non-global zones in Leonard were to be treated as Virtual Private Servers, Leonard specifically says that a non-global zone cannot change or affect anything in another non-global zone. In other words, translating this to the language of the present claim, Leonard specifically teaches that a VPS cannot affect or change anything in another VPS. It is self-evident that performing administrative functions on a designated VPS inherently requires changing or affecting other VPSs. If Leonard's non-global zones cannot change or affect other non-global zones, they obviously cannot administer them. In other words, Leonard expressly teaches against what is claimed.

¹ For the record, Applicants are not conceding this point, however, Applicants focus the current remarks on the primary claimed feature at issue in the prior communications – dedication of a VPS to administrative functions, rather than to distinctions between VPSs and Leonard's non-global zones.

The Final Office Action also relies on Price. Price has the same exact passage, which is found at column 4, lines 47 – column 5, line 4. On this particular point, the disclosures of Price and Leonard are identical.

Regarding Provisional Application No. 60/469,558, just as both Leonard and Price teach against the claimed combination, so does the ‘558 application to which they both claim priority. For example, Section 1.1 of the ‘558 application states the following:

1.1 Zone Basics

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Throughout this text, the term *global administrator* is used to denote a user with administrative privileges in the global zone. This user is assumed to have complete control of and responsibility for the physical hardware comprising the system, and of the operating system instance. **The term *zone administrator* is used to denote a user with administrative privileges who is confined to the sandbox provided by a particular zone.**

As may be seen from the highlighted portion, the ‘558 application expressly prohibits one non-global zone (i.e., one VPS, for purposes of the present discussion) changing or affecting or performing administrative tasks for any other VPS. The Supplemental Advisory Action also referred to Section 1.2 of the ‘558 application. Section 1.2 also confirms that one VPS (according to the ‘558 application) cannot affect another VPS:

1.2 Zone Principles

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- **No zone (other than the global zone) should be able to access objects belonging to another zone (including the global zone), either to control or modify those objects in some way, or to simply monitor or read them.**
- **As much as possible, processes in a non-global zone should not be able to interfere with the execution of processes in other zones in the system.** Although it is unlikely that this project can prevent all possible active denial-of-service attacks by

privileged processes in non-global zones, accidental and relatively trivial interference should be prevented.

In sum, as may be seen from the highlighted passages above, all three cited references – Leonard, Price, and the ‘558 application – specifically teach against the claimed feature of one Virtual Private Server performing administrative tasks for **other** Virtual Private Servers. Reconsideration is respectfully requested.

Rejections under 35 U.S.C. 102(e) based on TechOne Hosting

Applicants again respectfully point out that TechOne Hosting is a reseller of Virtual Private Servers marketed by the Applicant. When TechOne Hosting talks about a dedicated Virtual Private Server, **that Virtual Private Server is dedicated to a particular user** – this is the reason why Virtual Private Server technology has become popular in the last 10 years – the ability to dedicate a Virtual Private Server (as opposed to a real, physical private server) to a particular user. However, there is nothing in TechOne Hosting about using one Virtual Private Server to perform administrative tasks for **other** Virtual Private Servers. If nothing else, a reseller of Applicants’ technology can hardly resell something in 2003 that was not available as part of the VPS product in 2003.

The Supplemental Advisory Action cites various administrative functions mentioned in TechOne Hosting, such as administrative tools, web developer tools, resource management services, control panel, log analyzer, etc. – all of these functions are indeed available to an owner of a Virtual Private Server. However, the key point here is that the **claimed designated Virtual Private Server performs administrative functions for other Virtual Private Servers**. In

TechOne Hosting, the administrative services and functions that are mentioned there are available only to the owner of that particular VPS – in no circumstance, can one VPS described in TechOne Hosting affect or administer other VPSs running on the same machine.

Applicants also point out that the services mentioned in the Supplemental Advisory Action – developer tools, resource management, control panel, administration services, log analyzer – these are all part of a standard Virtual Private Server circa 2003 – the date of the TechOne Hosting reference. It is not at all surprising that the reseller of Applicants' products – TechOne Hosting – would mention them. However, they did not and could not advertise the use of one designated Virtual Private Server to administer other Virtual Private Servers.

Applicants also point out that the TechOne Hosting brochure is intended as a marketing document – a marketing document targeted at buyers of Virtual Private Servers – in other words, at users of the Virtual Private Servers themselves. The technology at issue in this application is of relevance not to the end users of the VPSs, but to hosting service providers – in other words, to companies such as TechOne Hosting. There is no reason why TechOne Hosting would even advertise such a thing to **its** customers. SWsoft, the assignee of this application, would advertise this technology to TechOne Hosting and other hosting providers who are customers of SWsoft, but TechOne Hosting would have no reason to advertise it to **its** customers.

Declaration under Rule 131

Applicants also respectfully point out that the Supplemental Advisory Action did not address the issue of the Rule 131 declaration submitted previously, as well as the expensive

discussion and exhibits in the petition under Rule 181. Respectfully, Applicants continue to believe that, aside from the technical merits, and in view of the evidence submitted and the arguments presented (the arguments and the case law which the Examiner himself requested), Applicants have effectively overcome the Leonard and Price references based on the Declaration (again, the provisional '558 application is a separate issue). Applicants respectfully request a clarification of the status of the Rule 131 Declaration, and if the Examiner continues to maintain the rejections based on Price and Leonard, a further clarification of why the evidence and the arguments submitted in the Rule 131 Declaration and the Rule 181 Petition are insufficient.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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